



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

January 4, 2008

Tom Lowery
AGU Operations Manager
Applied Materials, Incorporated
Applied Global University
3050 Bowers Avenue, AGU-MS 0170
Santa Clara, CA 95054

Dear Mr. Lowery:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET03-0224 for the period February 3, 2003 through February 2, 2005.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditor during the audit. If you have any questions, please contact Charles Rufo, Audit Manager, at (916) 327-5439.

Sincerely,

Original signed by:

Charles Rufo
Audit Director

Enclosures

cc: Phillip Herrera, Herrera & Company

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APPLIED MATERIALS, INC.

ET03-0224

Final Audit Report

For The Period

February 3, 2003 through February 2, 2005

Report Published January 4, 2008

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AUDITOR'S REPORT

Summary

We performed an audit of Applied Materials, Inc. Agreement No. ET03-0224, for the period February 3, 2003, through February 2, 2005. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit fieldwork was performed during the period July 10, 2006, through July 14, 2006, except for Finding No. 1, for which our report is dated August 10, 2006.

The Employment Training Panel (ETP) paid the Contractor a total of \$2,141,524. Our audit supported \$2,128,797 is allowable. The balance of \$12,727 is disallowed and must be returned to ETP. The disallowed costs resulted from 34 trainees with insufficient training hours, five trainees not meeting the full-time employment requirements, and three trainees who did not meet retrainee eligibility requirements. In addition, we noted an administrative finding for inaccurate reporting of trainee wage rates. Noncompliance with each of these four audit findings was previously disclosed in our audit of ETP Agreement No. ET01-0198.

AUDITOR'S REPORT (continued)

Background

Applied Materials, Inc. (Applied), was founded in 1967 and is headquartered in Santa Clara, California. The Company representatives reported that Applied employs 15,925 people worldwide; including 6,116 who are employed in California.

This is the third training Agreement with ETP. The company develops manufactures, markets, and services semiconductor wafer fabrication equipment and related spare parts for the worldwide semiconductor industry. Customers for these products include semiconductor wafer manufacturers and semiconductor integrated circuit (IC or chip) manufacturers. Integrated circuits are the key components in most advanced electronic products such as computers, telecommunications devices, and electronic games.

Applied proposed to provide training in Continuous Improvement, Computer, Business, Manufacturing, and Management Skills which will allow the company to achieve its goals and provide its California workforce with transferable skills in demand throughout industry.

This Agreement allowed Applied to receive a maximum reimbursement of \$2,966,400 for retraining 4,800 employees. During the Agreement term, the Contractor placed 3,185 trainees and was reimbursed \$2,141,524 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of Applied. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that Applied complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Trainees received the minimum training hours specified in the Agreement.
- Trainees were employed continuously full-time with Applied for 90 consecutive days after completing training, and the 90-day retention period was completed within the Agreement term.

AUDITOR'S REPORT (continued)

- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the 90-day retention period.
- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion	As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$2,141,524 of the \$2,128,797 paid to the Contractor under this Agreement is allowable. The balance of \$12,727 is disallowed and must be returned to ETP.
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Views of Responsible Officials	The audit findings were discussed with Contractor Representative, Pete Marcell, AGU Operations of Finance, and Phillip Herrera, Herrera & Company, via a telephone exit conference held on July 17, 2006. On September 29, 2006, Mr. Tom Lowery, AGU Operations Manager concurred with the audit findings and requested ETP to issue the final audit report.
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Due to an ETP staffing shortage in the Audit unit, the issuance of your Final Audit Report had been delayed. Therefore, ETP will waive the accrual of interest resulting from this audit for the disallowed costs from October 2, 2006 through the issue date of this Final Audit Report.

Audit Appeal Rights	If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).
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AUDITOR'S REPORT (continued)

Records

Please note the ETP Agreement, Paragraph 5 (a)(1), requires you to assure ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or the date of resolution of appeals, audits, or litigation, whichever is later."

Charles Rufo
Audit Director

Fieldwork Completion Date: July 14, 2006, except for Finding No. 1, for which our report is dated August 10, 2006.

SCHEDULE 1 – Summary of Audit Results

APPLIED MATERIALS, INC.

AGREEMENT NO. ET03-0224

FOR THE PERIOD

FEBRUARY 3, 2003 THROUGH FEBRUARY 2, 2005

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>\$ 2,141,524</u>	
Costs Disallowed:		
Insufficient Training Hours	\$ 8,441	Finding No. 1
Full-Time Employment Requirements Not Met	3,013	Finding No. 2
Ineligible Trainees	1,273	Finding No. 3
Inaccurate Reporting	-	Finding No. 4
	<hr/>	
Total Costs Disallowed	<u>\$ 12,727</u>	
Training Costs Allowed	<u>\$ 2,128,797</u>	

*See Findings and Recommendations Sections

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 –
Insufficient
Training Hours

Applied Materials, Inc. (Applied) training documentation did not adequately support the reported training hours for 34 trainees. Applied used customized multiple-day attendance rosters that were approved by the contract monitor during the Agreement term. The Contractor did not comply with Agreement requirements to ensure that all training records, class/lab and computer-based training (CBT) contained the required elements. We disallowed \$8,441 in training costs claimed for these trainees.

Title 22 California Code of Regulations, Section 4442(b) requires Contractor to maintain and make available records that clearly document all aspects of training. All class/lab training records must include hours of attendance and dates of training, be certified daily by the instructor during training, signed (or initialed) daily by the trainee, and signed by the trainer for each type of training.

Paragraph 2(b) of the Agreement between ETP and Applied states “...reimbursement will be based on the total actual number of training hours completed by training delivery method for each trainee... Reimbursement for each completed CBT course shall be for the standard number of hours to complete the course...” The Agreement required a minimum of 40 training hours and maximum of 160 training hours for each trainee.

Our audit sample included 96 trainees randomly selected from all trainees placed. The Contractor provided “ETP Training Attendance Roster (class/lab & CBT)” summaries, “CBT Course Listing with Standard Hours”, “Instructor Delivery Report”, and “Trainee Transcripts” from Applied’s Learning Management System. The ETP Training Attendance Rosters did not support class/lab and CBT training hours invoiced for 34 trainees (see next page). For 33 out of the 34 trainees, there were no training records found or no instructor was identified on secondary source documentation as reported on the attendance summaries (Note: 14 of the 34 trainees had less than 40 allowable training hours).

The Contractor’s use of a modified attendance roster – “ETP Training Attendance Roster” to track ETP-funded training created documentation deficiencies. For instance, we found that the trainees sampled did not sign or initial their attendance summary roster on the first day of training but instead signed once after the training was completed. Frequently, the trainee and trainer signed for training several months after the completion of all required training. Also, the trainer would sign and approve the training only once, even if more than one training type was provided. ETP reviewed other secondary source documentation, described above, to provide sufficient competent evidence of training hours attended.

FINDINGS AND RECOMMENDATIONS (continued)

Trainee No.	Training Hours Reported		Training Hours Disallowed		Allowable Training Hours		Code
	Class	CBT	Class	CBT	Class	CBT	
1	36	31	10		26		A
2	53	1	20		33		A
3	54	37	14		40		A
4	40	0	20		20		A
5	36	21	8		28		B
6	75	8	13		62		A
7	52	13	16		36		A
8	60	2	12		48		A
9	57	8	16		41		A
10	121	0	16		105		A
12	114	46	46		68		A
14	28	15	9		19		A
15	45	24	13		32		A
16	50	37	16		34		A
17	16	24	16		0		A
18	95	45	21		74		A
19	118	13	40		78		A
20	24	21	0	19	24	2	A
21	137	9	13		124		A
22	18	39	14		4		A
23	31	15	13		18		A
24	114	0	59		55		A
25	146	2	8		138		A
26	127	11	26		101		A
27	30	19	9		21		A
28	48	50	12		36		A
31	11	31	1	16	10	15	A
32	62	33	62	33	0	0	A
33	27	38	12		15		A
34	61	25	14		47		A
35	123	37	24		99		A
36	90	8	76		14		A
38	94	0	56		38		A
39	65	17	12		53		A

LEGEND:

A = There was no training record found and/or no instructor was identified on secondary source documentation.

B = Training did not occur in an approved location of training (outside of California).

Note: Shaded areas show Computer Based Training (CBT) that had no difference between reported and allowable training hours.

FINDINGS AND RECOMMENDATIONS (continued)

Recommendation Applied must return \$8,441 to ETP. In the future, both ETP and Applied should ensure that any approvals given to modify ETP's standard record keeping practices are incorporated into the terms and conditions of the Agreement. ETP's audit unit should also be given the opportunity to determine whether requested modifications can be audited by the Panel to substantiate training, which is consistent with Title 22 CCR 4442.2.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Applied's payroll records and other documentation show five Full-Time trainees were not employed full-time during their respective post-training retention periods. We disallowed \$3,013 in training cost Requirements Not claimed for these trainees.
Met

Exhibit A, page 5, paragraph VII-A of the Agreement states, "Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training. The retention period shall be completed no later than the last day of this Agreement. "

The table below shows the hourly wage rate, retention period, termination date (if applicable) and average hours per week for each of the five trainees. The hourly wage rate, termination date, and average hours per week was confirmed through payroll and personnel reports provided by Applied.

Trainee No.	Hourly Wage Rate	Post-Training Retention Period	Terminated From Employment	Average Hours Per Week
3	\$55.70	10/13/04 - 1/11/05	N/A	22
11	\$28.45	7/31/03 - 10/29/03	9/15/2003	25
21	\$32.13	4/26/03 - 7/25/03	6/21/2003	31
30	\$19.92	8/14/03 - 11/12/03	9/16/2003	20
39	\$27.11	4/13/04 - 7/12/04	6/18/2004	30

Based on the hourly wage rates, Employment Development Department (EDD) base wage information does not support these trainees were employed full-time during the identified retention period or any subsequent 90-day period up to the Agreement end date.

Recommendation Applied must return \$3,013 to ETP. In the future, Applied should ensure that trainees meet full-time employment requirements during their post-training retention period before claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Ineligible Trainees Applied's employment information shows 3 trainees were ineligible to receive training. The trainees did not meet employment requirements prior to the start date of training. Thus, we have disallowed \$1,273 in training costs claimed for these trainees.

Unemployment Insurance Code, Section 10201(c) and Exhibit A, III of the Agreement requires a retrainee to be employed full-time by the Contractor for a minimum of 90 days as of the trainee's start date of training. A retrainee may also be employed for less than 90 days with their employer, if they were employed for at least an average of 20 hours per week for at least 90 days by an ETP eligible employer(s) during the 180 day period preceding their hire date.

Three trainees were not employed by Applied for a minimum of 90 days prior to each trainee's start date of training. Also, according to Employment Development Department (EDD) base wage information, no sufficient prior employment was shown for these trainees. The table below shows the trainee's hire date per Applied Materials' personnel records, and first day of training reported on the ETP Training Attendance Roster summaries.

Trainee No.	Trainee Hire Date	First Day of Training
14	December 8, 2003	December 17, 2003
17	August 2, 2004	August 4, 2004
31	June 16, 2003	June 18, 2003

Recommendation Applied must return \$1,273 to ETP. In the future, the Contractor should ensure all retrainees meet eligibility requirements before the start of training.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 – Trainee hourly wage rates reported by Applied on invoices submitted to ETP were inaccurate. As a result, the Contractor did not comply with Agreement reporting requirements.

Inaccurate
Reporting

Paragraph 2(d) of the Agreement states, “Contractor shall submit invoices and necessary statistical data to ETP in a form and manner prescribed by ETP.” Actual, complete trainee wage rate information is required to verify compliance with Exhibit A, paragraph VII-A of the Agreement. This section states, “Each trainee must be employed full time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

We documented actual trainee wage rates for 96 trainees. Actual wage rates were identified from employer payroll records. Trainee wage rates reported by Applied varied by more than 5 percent from the reported wage rates for 79 of the 96 trainees (82 percent).

Recommendation In the future, Applied should ensure all trainees data submitted to ETP are accurate and complete. Inaccurate or incomplete data may result in repayment of unearned funds, plus applicable interest, to ETP.

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET03-0224 and should not be used for any other purpose.

ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 200